

BEFORE THE KANSAS BOARD OF VETERINARY EXAMINERS

IN THE MATTER)
)
 OF)
 KYLE BERNING, DVM)
 License Number: [REDACTED])
 Respondent)
 _____)

Case No. 18013

FILED

NOV 14 2018

KS BOARD OF
VETERINARY EXAMINERS

Pursuant to K.S.A. Chapter 77

CONSENT AGREEMENT AND FINAL ORDER

NOW ON THIS 14th day of November, 2018, the above captioned matter comes before the Kansas Board of Veterinary Examiners ("Board"), by agreement with Kyle Berning, D.V.M. ("Respondent"), for the purpose of resolving the above captioned matter.

The parties knowingly and voluntarily agree as follows:

1. Respondent is and was at all times relevant to this matter licensed by the Board to practice veterinary medicine in Kansas pursuant to K.S.A. 47-817 *et seq.*, and amendments thereto. Board records reflect that the Respondent was issued veterinary license number [REDACTED] on or about May 14, 2010. The Respondent's license to practice veterinary medicine in Kansas is current and will expire on June 30, 2019.

Case 18013

2. On or about April 6, 2018, information was received by the Board indicating that the Respondent may have violated certain provisions of the Kansas Veterinary Practice Act or the Kansas Administrative Regulations governing the practice of veterinary medicine in Kansas. A subsequent investigation revealed the following facts to be established by a preponderance of evidence:

- a. On or about December 29, 2014, Respondent was notified that a cow was struggling to deliver her calf. Respondent went to the owner's pen to assist with the delivery. Respondent did not complete a cesarean section on the cow. Respondent did shoot the cow, and later reported that the cow would not have survived. Respondent documented that he administered medications to the cow; however, the owners of the cow reported that Respondent did not give any medications. Respondent submitted a bill to the owners for these medications. Further, the medical records fail to include any information regarding the cow or the calf. Specifically, there is no history, no assessment of the cow or calf, or no information of what care was provided to either the cow or the calf. Additionally, there was no reason noted why the cow had to be shot.
- b. The owners of this cow also reported that Respondent was rude in his dealing with the owners.

- c. Respondent documentation in medical records fail to meet the minimum requirement and fails to include a complete record of the physical examination findings and treatment or services rendered. Respondent only includes medications administered; however, there is no physical findings of the animal.
- d. In March 2017, Respondent's associate, Stormie McClurg, D.V.M. completed a cesarean section on a cow. Respondent was alleged to have acted unprofessionally when speaking to the owner of the cow. Respondent reportedly made such comments as, "Never send a woman to his clinic without a man being present." Additionally, it was alleged that Respondent remarked that his female associate veterinarian was weak and incapable of doing large animal work. Further, there are no medical records for the March 2017 cesarean record, which Dr. McClurg stated a medical record was completed.
- e. On April 10, 2018, Respondent completed an interview with the Board's investigator. During this interview, Respondent stated, "I do come off somewhat fiery at times".

APPLICABLE LAW

3. K.S.A. 47-816(h)(1): Practice of veterinary medicine means, "To diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury or other physical or mental condition; including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthesia or other therapeutic or diagnostic substance or technique on any animal including but not limited to acupuncture, surgical or dental operations, animal psychology, animal chiropractic, theriogenology, surgery, including cosmetic surgery, any manual, mechanical, biological or chemical procedure for testing for pregnancy or for correcting sterility or infertility or to render service or recommendations with regard to any of the above and all other branches of veterinary medicine."

4. K.S.A. 47-830(o)(4): The Board, in accordance with the provisions of the Kansas Administrative Procedure Act, may refuse to issue a license, revoke, suspend, limit, condition, reprimand or restrict a license to practice veterinary medicine or an institutional license for violation of or attempting to violate, directly or indirectly, any provision of the Kansas Veterinary Practice Act or any rules and regulations adopted pursuant to such act. Specifically:

- a. K.A.R. 70-7-1(h)(2)(D): Each veterinarian shall ensure that all patient records are legible and made contemporaneously with treatment services rendered; and contain a complete record of the physical examination findings and treatment or services rendered.
- b. K.A.R. 70-7-1(ee): Acting in a manner that is likely to injure the professional reputation, standing, prospect of practice, or employment of another member of the profession and that could be deemed malicious, false, or misleading.

5. K.S.A. 47-842: In addition to the board's authority to refuse licensure or impose discipline pursuant to K.S.A. 47-830, and amendments thereto, the board shall have the authority to assess a fine not in excess of \$5,000 against a licensee for each of the causes specified in K.S.A. 47-830, and amendments thereto. Such fine may be assessed in lieu of or in addition to

such discipline. The proceedings under this act shall be conducted in accordance with the Kansas Administrative Procedure Act, and the board shall have all the powers granted therein.

6. Respondent and the Board mutually desire to enter into this Consent Agreement and Final Order in lieu of further summary and adjudicative proceedings.

7. Respondent understands that by entering into this Consent Agreement and Final Order she waives all rights to further adjudication of facts and law that could be determined pursuant to summary proceedings or a hearing conducted in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.* in relation to Case No. 18013.

8. Licensee waives the right to file a motion for reconsideration and all rights of appeal pursuant to the Kansas Act for Judicial Review, K.S.A. 77-601 *et seq.* in relation to Case No. 18013.

9. The Board accepts Respondent's waiver of rights and stipulations.

ORDER

WHEREFORE, the Board finds that Respondent is in violation of K.S.A. 47-839(o)(4), as defined in K.A.R. 70-7-1(h)(2)(D), specifically, Respondent has failed to ensure that at all times patient records contain a complete record of the physical examination findings and treatment or services rendered.

FURTHER WHEREFORE, the Board finds that Respondent is in violation of K.S.A. 47-839(o)(4), as defined in K.A.R. 70-7-1(ee). Specifically, Respondent has on occasion acted in a manner that is likely to injure the professional reputation of another member of the profession as a whole by making disparaging remarks about other veterinarians, and in addition, his dealings with clients has been perceived as rude.

NOW THEREFORE, Respondent consents to the following terms and conditions, and the Board orders that:

1. Respondent shall successfully complete, and pass all five (5) topic areas of the Essay Examination that is offered by Ethics and Boundaries Assessment Services, LLC. This course is available at:
<http://www.ebas.org>

10. In the alternative, Respondent may propose to the Probable Cause Committee for their consideration an alternate professional ethics course in lieu of the aforementioned course.

11. Respondent shall complete this course within ninety (90) days from the time this Consent Agreement and Order takes effect. The score report of any and all examination attempts by Respondent, regardless of Respondent receiving a passing or failing score shall be provided to

the Board at its offices located at P.O. Box 379, Wamego, Kansas, 66547, within fourteen (14) days of the successful completion of the above course.

12. All foreseen and unforeseen expenses to complete the aforementioned course including travel, lodging, program fee, meals, etc., shall be at Respondent's own expense.

13. These hours shall be in addition to those continuing education hours required for renewal of license.

14. After completion of the actions set out in the Consent Agreement and Final Order, Respondent will have no remaining obligations to the Board in relation to this case. However, Respondent may be subject to further enforcement action if she fails to comply with the terms, conditions, and requirements imposed by this Consent Agreement and Final Order.

15. The matters referred to in this Consent Agreement and Final Order shall not be grounds for future action against Respondent, except the extent that that such matters may be relevant for future disciplinary or licensure proceedings in the Board's consideration of the factors identified in K.S.A. 47-829 [Licenses; expiration; renewal; continuing education requirements], and K.S.A. 47-830 [Grounds for refusal to issue or revocation or suspension of license or other restriction], for establishing rehabilitation or a pattern of conduct.

16. Except as provided in paragraph 15, this Consent Agreement and Final Order shall operate as a complete release of all claims the parties may have against each other pending before the Board and arising out of the Board's investigation of these matters. Respondent agrees not to file, or cause to be filed, any litigation or claims in any federal or state court of law or federal or state administrative agency against the Board, its agents, Board members, or employees, individually or in their official capacity. Such litigation or claims include, but are not limited to, any K.S.A. Chapter 60 or Chapter 61 civil action regarding negligence and/or a 42 United States Code action and/or any administrative petition for redress. Licensee agrees that all actions in this matter were a bona fide use of administrative discretion on the part of the Board, its members, and employees, which is a statutory exception to liability within the Kansas Tort Claims Act, K.S.A. 75-6104(b), (c) or (e).

17. Respondent agrees that this Consent Agreement and Final Order conforms to Kansas and federal law and that the Board has jurisdiction to enter into it and enter the Final Order provided for herein.

18. Respondent understands that a notification of this Consent Agreement and Final Order shall be provided to any other state licensing board or entity if Respondent is also licensed, registered or certified in another state.

19. This Consent Agreement and Final Order shall be a public record in the custody of the Board. Additionally, this Consent Agreement and Final Order may be made know to the public by publication in the Board's newsletter and/or by a press release issued by the Board.

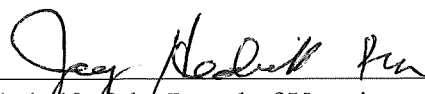
20. This Consent Agreement and Final Order constitutes the entire agreement of the parties and may only be modified by order of the Board or by a subsequent writing signed by the parties. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

21. This Consent Agreement and Final Order shall become effective on the date indicated in the Certificate of Service.


WHEREFORE, the parties consent to these provisions, which are hereby made the Final Order of the Kansas State Board of Technical Professions in the above-captioned case.

IT IS SO ORDERED.

Signed:


On behalf of the Board of Veterinary Examiners

APPROVED AND CONSENTED TO BY:



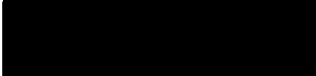
Kyle Berning D.V.M., Respondent



Date

CERTIFICATE OF SERVICE

This is to certify that on this 14th day of November, 2018, a true and correct copy of the above and foregoing Consent Agreement and Final Order was deposited in the U.S. Mail, first class postage prepaid, addressed to:

Kyle Berning, DVM


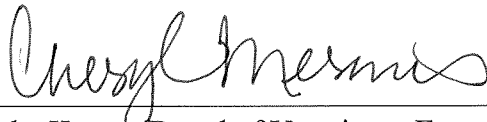
Respondent

and by email to: jane.weiler@ag.ks.gov

Jane E. Weiler, No. 25276
Assistant Attorney General
Attorney for the Board

and the original filed with:

The Kansas Board of Veterinary Examiners
PO Box 379
Wamego, KS 66547



For the Kansas Board of Veterinary Examiners